

Financial Services Unit  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [ProfessionalStandards@treasury.gov.au](mailto:ProfessionalStandards@treasury.gov.au)

Dear Sir/ Madam,

The following comments are submitted in response to Treasury's request for views on the core elements of the PJC Model: Lifting the professional, ethical and education standards in the financial services industry.

The model outlined by The Parliamentary Joint Committee on Corporations and Financial Services' Inquiry is very similar to the co-regulatory model for Insolvency Practitioners (IPs), originally recommended by the ALRC General Insolvency Inquiry Report (No 45) known colloquially as the *Harmer Report*. The Harmer Report co-regulatory model was not subsequently adopted in Australia, although a similar model was adopted within the United Kingdom which is currently under reform. Measures presently being implemented in the United Kingdom to address a perceived public lack of confidence in IPs may inform the new regulatory model for the financial services industry.

### **Lifting Professional Standards**

Recommendations 1-5 are essential in restricting and controlling the eligibility of persons providing financial advice. To further protect financial advice recipients from persons registered there should be a further restriction included in Recommendation 5 that advisers no longer be authorised to provide financial advice if the adviser no longer maintains professional indemnity insurance (there being a dual obligation on the adviser's respective professional body or insurance company to advise of a lapse of insurance).

The register must be a searchable public register and its existence widely publicised (see further comments below: Lifting the Public's Perception of Financial Advisers).

The PJC's recommendations, at this embryonic stage, provide no cap on the number of professional associations of financial advisers as long as each professional association is approved by the Professional Standards Council. However, looking to the future it may be more difficult to maintain standards across a larger number of professional associations. For example, it has been suggested in the United Kingdom, where there are 7 recognised professional bodies of Insolvency Practitioners that "the regulatory system would be more effective if fewer bodies were involved."<sup>1</sup>

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<sup>1</sup>United Kingdom, The Insolvency Service, *Strengthening the regulatory regime and fee structure for insolvency practitioners*. 3. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/280880/Strengthening\\_the\\_regulatory\\_regime\\_and\\_fee\\_structure\\_for\\_insolvency\\_practitioners.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280880/Strengthening_the_regulatory_regime_and_fee_structure_for_insolvency_practitioners.pdf)

The recommendation that notification of suitability for registration is by the professional association is considered unnecessary. If the registration requirements are established through formal tertiary education requirements (see “Lifting Educational Standards” below) as well as membership with an approved professional association, it is suggested that evidence of qualification and membership should be sufficient to ensure registration requirements are satisfied. However, we agree that the professional associations should have the capacity to recommend that a licence be revoked.

### **Lifting Educational Standards**

Recommendations 7-9 which are in accord with existing educational requirements for Chartered Accountants and CPAs should definitively raise the standard of education of financial advisers. However, given the prevalence of online courses offered by the tertiary education sector (public and private) and the popular use of multiple choice questions in exams, there should be ongoing scrutiny of the exam-setting process and the conditions under which exams are conducted.

In relation to the recommended level of study, we consider that new financial planners and financial advisers should be required to hold an approved degree at AQF level 8 as a minimum entry level. This program of study could include an AQF level 7 degree and a structured professional year program that was accredited by TEQSA at AQF level 8, such as a Graduate Certificate specialist course. If the entry level is AQF level 8, then the requirement for an entry examination may not be necessary to ensure suitability for registration.

In addition, the degree qualification should include a specified level of commercial law, as well as finance and/or accounting content. This is consistent with recommendations currently proposed for registered insolvency practitioners. Under Recommendation 10 the finance profession can impose entry barriers to the finance industry which ultimately may impact the level of competition within the industry to the detriment of the consumer. Costs of establishing and maintaining the Finance Professionals’ Education Council and its associated responsibilities (including the setting of curriculum requirements for tertiary level accredited finance courses; developing and administering the professional year including the final year exam; and administering the continuing professional development program for financial professionals) may be significant, especially in the fledgling years, when the number of professional finance associations able to share such costs are limited.

### **Lifting Ethical Standards**

When establishing codes of ethics in accordance with Recommendation 11, professional finance associations should consider Australian Restructuring and Turnaround Association’s (ARITA) Code of Conduct as a comprehensive template.

To ensure professional associations are maintaining ethical standards and investigating complaints against financial advisers there should be proactive audits of the professional associations by ASIC on a regular ongoing basis.

In turn, professional finance associations should conduct audits of their members' activities, including CPD obligations.

### **Dealing with Complaints against Financial Advisers**

The PJC model does not clearly outline which particular agency eg ASIC /professional body is to deal with consumer complaints against financial advisers. In the United Kingdom the "Complaints Gateway" was introduced approximately a year ago to provide a single point of access for persons/consumers to complain about IPs. Given its one-stop shop status, the Gateway is very accessible and prompt, dealing with complaints within 15 days. For example, by passing the complaint onto the relevant recognised professional body for determination or rejecting the complaint on the basis that it arises from a lack of creditor understanding, which is addressed through creditor education procedures.

### **Lifting the Public's Perception of Financial Advisers**

One way of addressing the confidence gap is through the application of a comprehensive study on the expectations gap of users of financial planning / advice services and the actual roles and responsibilities of service providers. A useful approach is through the 'expectations gap' framework that has previously been applied to the audit profession. Similar discussion has been had in relation to the regulation of insolvency practitioners.<sup>2</sup> This model provides a useful tool in relation to determining whether issues arise due to regulation deficiencies, compliance problems or gaps in the expectations of users.

There is a need to increase the public's confidence that the regulatory framework governing financial advisers will detect those advisers who are unethical, and/or who do not act in the best interests of their clients. One means of doing so is to publicise regulatory actions taken against erring financial advisers; publish the results of audits, monitoring visits of financial advisers (both the good and bad results). Greater transparency of the regulatory controls imposed on financial advisers and the outcomes from such controls will increase the public's confidence that the rogues have been dealt with and enhance the reputation of remaining financial advisers. Using social media (media releases, blogs, podcasts, twitter) to publish these outcomes may have an immediate positive impact on the public's perception.

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<sup>2</sup> Anderson, Colin & Brown, Catherine (2014) "Mind the insolvency gap : lessons to be learned from audit expectations gap theory" 22(4). *Insolvency Law Journal* 178.

Focus should, however, also be maintained on the level of public financial literacy and what financial advisers/financial planners do and do not do. Knowledge and understanding of the safe harbour rule and that financial advisers are not absolutely liable to their clients must be understood and acknowledged by the public.

Kind Regards

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